BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BARBARA J. O'CONNELL)

Appearances:

For Appellant: Barbara J. O'Connell, in pro. per.

For Respondent: Steven S. Bronson
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Barbara J. O'Connell against proposed assessments of additional personal income tax in the amounts of $257.40, $180.21, and $187.65 for the years 1972, 1973, and 1974, respectively.

The sole issue presented is whether child care expenses incurred by appellant in excess of the maximum annual deduction for such expenses provided in section 17262 of the Revenue and Taxation Code are deductible as business expenses or as expenses incurred for the production of income.

During the years on appeal, appellant incurred expenses in the amounts of $3,506.80, $3,971.25, and $2,402.32 for the care of her dependent child, a son under the age of 13. The expenses were incurred to enable appellant, a divorcee, to be gainfully employed.

Appellant claimed the total amounts of the child care expenses as deductions on her respective 1972, 1973, and 1974 California personal income tax returns on the theory that such expenses constituted either ordinary and necessary business expenses or expenses incurred for the production of income. However, respondent disallowed each deduction to the extent that it exceeded the maximum annual deduction allowable for child care expenses incurred by a working parent, as provided in section 17262 of the Revenue and Taxation Code.1/

1/ During the years on appeal, section 17262 provided, in pertinent part:

> (a) There shall be allowed as a deduction expenses paid during the taxable year by a taxpayer who is a woman or widower...for the care of one or more dependents (as defined in subsection (d)(l)), but only if such care is for the purpose of enabling the taxpayer to be gainfully employed.
>
> (b) (1) (A) Except as provided in subparagraph (B), the deduction under subsection (a) shall not exceed six hundred dollars ($600) for any taxable year.

The California courts and this board have not previously considered the precise issue presented by this appeal. However, section 17262 of the Revenue and Taxation Code is substantially similar to its federal counterpart, section 214 of the Internal Revenue Code of 1954.[2/] Accordingly, federal court decisions construing the federal statute are entitled to great weight in applying the state provision. (Meanley v. McColgan, 49 Cal. App. 2d 203, 209 [121 P.2d 453] (1942); Appeal of Howard and Margaret Richardson, Cal. St. Bd. of Equal., Feb. 2, 1976.)

Prior to the enactment of section 214, child care expenses were considered essentially personal in nature, and therefore nondeductible even though incurred to enable the taxpayer to engage in employment. (See O'Connor v. Commissioner, 6 T.C. 323, 324 (1946); Edward Hauser, T.C. Memo., April 28, 1949.) However, in 1954, Congress recognized that certain child care expenses are "comparable to an employee's business expenses, and provided a limited deduction for such expenses by enacting section 214. (H.R. Rep. No. 1337, 83rd Cong., 2d Sess. (1954) and S. Rep., 83rd Cong., 2d Sess. (1954) [Vol. 3, 1354 U.S. Code Cong. & Ad. News 4055, 46661.) The amount and availability of the deduction for child care expenses have been expanded by subsequent amendments to section 214. (See 26 U.S.C.A. § 214.) Yet, the enactment of section 214 and the amendments thereto have not affected a change in the basic approach utilized by the federal courts for determining the deductibility of child care expenses in excess of the statutory limit. The federal courts have uniformly held that child care expenses incurred by a working parent, to the extent that they exceed the maximum deduction allowable under section 214, represent nondeductible personal expenditures. (Carroll v. Commissioner, 418 F.2d 91, 95 (7th Cir. 1969); O'Connell v. United States, 29 Am. Fed. Tax R.2d 596 (1972); William T. Preston, T.C. Memo., Aug. 31, 1961; Kenneth S. King, T.C. Memo., Dec. 22, 1960.)

2/ Section 17262, as it read during the years on appeal, was based upon the provisions of section 214 prior to its amendment in 1971.

Appellant contends that the above cited cases are not controlling with respect to the issue presented by this appeal since the cases were decided prior to the 1971 amendment of section 214. It is apparently appellant's position that the amendment and its legislative history reveal an intent on the part of Congress to allow the deduction of child care expenses in excess of the statutory limit under the general provisions relating to business expenses. We disagree.

Section 214 was amended in 1971 solely for the purpose of liberalizing and expanding the deduction for child care expenses. (See S. Rep. No. 92-437, 92d Cong., 1st Sess. (1971) [Vol. 2, 1971 U.S. Code Cong. & Ad. News 1966].) There is no indication either in the language of the amendment or in its legislative history that Congress intended the amendment to result in the allowance of an unlimited deduction for child care expenses as business expenses. To the contrary, the amendment merely reaffirmed the choice of Congress to classify such expenses in a category separate and distinct from general business expenses and thereby- limit their deduction. (See Feld, Deductibility of Expenses for Child Care and Household Services: New Section 214, 27 Tax L. Rev. 415 (1972).)

Appellant has presented a strong argument in support of her position. However, in resolving the issue presented by this appeal, we are bound by the applicable provisions of the Revenue and Taxation Code; appellant's argument is one that must be addressed to the state Legislature in seeking further liberalization of the law.

On the basis of the foregoing, we have no alternative but to conclude that child care expenses are deductible only in accordance with the specific limitations provided in section 17262 of the Revenue and Taxation Code. Accordingly, respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Barbara J. O'Connell

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Barbara J. O'Connell against proposed assessments of additional personal income tax in the amounts of $257.40, $180.21, and $187.65 for the years 1972, 1973, and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of May, 1977, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Executive Secretary